IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6690 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARUBHA MAHOBATSINH JHALA

Versus

DISTRIC DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 6690 of 1989

MR GM AMIN for Petitioner

MR SP HASURKAR for Respondent No. 1

M/S TRIVEDI & GUPTA for Respondent No. 2

MR RJ OZA for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner seeks direction for payment of pensionary

benefits . His service record was as under :

he was appointed on 4.2.1969 on the post of tubewell operator in the Panchayat service of the State and continued in this service upto 16.6.1978. His services along with other employees working on tubewells came to be transferred en bloc to the newly formed Gujarat Water Resources Department. While in service of the Corporation, pay-scales were revised with effect from 1.,1.1973 under the second Desai Pay Commission. The Pay Commission also recommended terminal and pensionary benefits to be granted to all categories of employees who had completed five years of service. The Pension Rules, however, required completion of minimum ten years of qualifying service.

The question involved in this petition is- whether period of service rendered by the petitioner in the Corporation can be counted towards total period of his service for the purpose of claiming pensionary benefits from the State in the Panchayat Service.

Learned counsel for the petitioner placed reliance on two resolutions of the Government dated 10.6.1976 and 14.10.1981. On reading relevant part of the resolution, dated 14.10.1981, learned counsel points out that it was noticed subsequently by the Government that employees whose services were transferred cannot be treated as absorbed in the service of Corporation until they are made to exercise their option for transfer of service. The employees transferred from different departments to the Corporation were,therefore, directed to be given option for absorption in the service of the Corporation. The resolution also directs that so long as employees do not exercise their option, they would be treated to be as on deputation in the service of the Corporation. Reliance is ultimately placed on para 7 of the resolution, dated 14.10.1981 and part of para 9 , relevant part whereof reads as under:

"9. All the three categories of officers and employees mentioned above who were working in the erstwhile Directorate on or before 10.6.1976 are only entitled for exercising option and they should,therefore, exercise their option within a period of two months from the date of issue of this G.R.in the prescribed form appended to this G,R. The options received thereafter will not be entertained under any circumstances.

The above orders also apply mutatis mutandis to all the employees of the district panchayats who have been transferred en bloc to the Corporation along with the tubewells activities and they should also, therefore, exercise their options likewise subject to the same condition till the expiry of the stipulated period of two months given for exercising options and in the event of their exercising option to remain with the Corporation, they will be deemed to have severed all connections with the State Government service from the date of completion of the period of two months given for exercising option under this Government resolution."

Learned Assistant Government Pleader appearing for the State in his reply submitted that the resolution is of no avail to the petitioner as he was working as work-charge tubewell operator and such option was available only to regular employees. It is submitted that when the entire tubewell work stood transferred to the Corporation, the work-charge employees could claim no right of option to remain in service of the Panchayat and were compulsorily transferred en bloc to the Corporation.

It is not in dispute that total service period of the petitioner in the service of Panchayat is 9 years - 4 months and 11 days , which is short only by a few months to be able to claim pensionary benefits for which minimum qualifying period of service prescribed is ten years.

The short question that arises before me is, as to whether the petitioner is entitled to take the benefit of resolution, dated 14.10.1981 and seek addition of period of his service in the Corporation for claiming pensionary benefits. Relevant part of resolution has already been quoted above. It is not made clear in the resolution dated 14.10.1981 that work-charged employees are outside its purview. Even if the petitioner was work-charged employee, he could have claimed a right not to seek transfer to the Corporation service but to seek employment elsewhere. Since his services were compulsorily transferred without taking any option from him under the resolution dated 14.10.,1981 along with other employees transferred from different departments, he would be deemed to be work-charged employee on deputation from the service of the Panchayat to the services of the Corporation. Period of service,therefore, spent by him in the Corporation has to

be added to his pensionary service. It is also not in dispute that the petitioner on attaining superannuation age of 58 years, has retired on 30.4.1988 and before his retirement, had not exercised any option to be absorbed in the services of the Corporation. Subsequent resolution on which reliance has been placed on behalf of the State,therefore,cannot be made applicable to him as the same has been issued after his retirement.

As a result of the discussion above, the petition succeeds and is hereby allowed. Respondents Nos. 1 and 3- i.e.Panchayat Department represented through the District Development Officer and Director of Pension and Provident Fund, Government of Gujarat, are directed to entertain the claim of the petitioner for fixation of his pension and allow him pensionary benefits by treating him to have completed ten years of qualifying service. Since the petitioner retired in 1988, on his making suitable approach in writing to the concerned authorities (respondents Nos. 1 and 3), within a period of one month , necessary orders in his favour would be passed to enable him to obtain pension within outer limit of three months from the date of receipt of representation.His pension be fixed from the due date and arrears to be also paid to him. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(D. M. Dharmadhikari, C.J)

parekh